

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION**

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	3:12-cr-00002-RLY-CMM-2
vs.)	
)	
KENNETH FOX,)	
Defendant)	

REPORT AND RECOMMENDATION

On February 5, 2021, the Court held an initial hearing on the Petitions for Warrant for Offender Under Supervision filed on December 10, 2020 [Doc. 178] and January 15, 2021 [Doc. 180]. Kenneth Fox (“Defendant”) appeared by video with FCD counsel, Mike Donahoe also appearing by video. The Government appeared by Todd Shellenbarger, Assistant United States Attorney. U. S. Probation appeared by Officer Katrina Sanders. The Defendant consented to conducting the hearing by video online. This matter is heard on a referral from U.S. District Judge Richard L. Young. The Defendant was advised that any recommendation from a magistrate judge was subject to review, acceptance, or rejection by the District Judge, who retains ultimate authority to adjudicate these matters.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. §3583:

1. The Court advised Defendant of his rights and provided him with a copy of the petition. Defendant, by counsel, waived his right to a preliminary hearing.
2. After being placed under oath, Defendant admitted Violation 1 in the 12/10/2020 petition and both violations 1 and 2 in the 1/15/2021 petition.

3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation
Number**

Nature of Noncompliance

1. "You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption."

The offender reported to the probation office on December 4, 2020, and reported to using synthetic marijuana on multiple occasions.
1. "You shall refrain from any unlawful use of a controlled substance."

On December 14, 2020, the offender admitted to using synthetic marijuana over the weekend, to help him sleep.

On January 7, 2021, the offender admitted to this officer he used synthetic marijuana on December 25, 2020.

On January 13, 2021, the offender reported to the probation office. The offender was clearly intoxicated.

On January 15, 2021, the offender admitted to smoking synthetic marijuana prior to his office appointment on January 13, 2021.

As previously reported to the Court, on December 4, 2020, the offender reported to using synthetic marijuana on multiple occasions.
2. "You shall reside in a residential reentry center for a term of 6 months. You shall abide by the rules and regulations of the facility."

On December 10, 2020, VOA staff found two baggies of an unknown powder substance in the offender's locker. The offender admitted the substance found in the locker is "spice".

On January 14, 2021, the offender was transported to the hospital at 9:03 PM, regarding an issue with his throat. The offender did not follow reporting instructions while at the hospital.

The offender returned to the facility on January 15, 2021, at 2:23 AM. The offender provided staff no explanation of his unaccounted time and did not have any hospital documentation.

VOA advised the offender is expelled from their facility.

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade **C** violation.
- (b) Defendant's criminal history category is VI.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is **8-14** months imprisonment.

5. Parties jointly recommended that defendant serve 12 months with no further supervision upon release.

6. The Magistrate Judge, having considered the factors in 18 U.S.C. §3553(a), and as more fully set forth on the record, finds that:

(a) The Defendant made a voluntary and knowing admission of the violations set forth in the petitions;

(b) The agreement of the parties is an appropriate resolution of this matter and the agreement is commended to the favorable consideration of the District Judge.

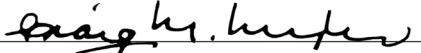
Recommendation

Consistent with the parties' agreement, the Magistrate Judge respectfully recommends the Defendant be sentenced to 12 months in the custody of the U.S. Bureau of Prisons and that no term of supervised release be incorporated in the sentence.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The Defendant is ordered detained pending the District

Judge's review of the report and recommendation. The parties have 14 days from this date to appeal this report and recommendation.

Dated: February 5, 2021


CRAIG M. McKEE, Magistrate Judge
United States District Court
Southern District of Indiana

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